Office - Supreme Court, U.S.
FILED
JAN 14 1982
ALEXANDER L. STEVAS,
CLERK

No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of
PEDRO BAREZ, SECRETARY, DEPARTMENT OF
LABOR AND HUMAN RESOURCES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR PETITIONERS

THOMAS J. BACAS
S. STEVEN KARALEKAS
CHARLES, KARALEKAS, BACAS
& MCCAHILL
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/466-7330

Attorneys for Petitioners

Of Counsel:

WILLIAM A. JOHNSTON
HARRISON & JOHNSTON
Winchester, Virginia 22601

January 14, 1982

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

Whether the Commonwealth of Puerto Rico has standing as *parens patriae* to sue 32 Virginia apple growers for alleged breaches of employment contracts with Puerto Rican workers and alleged violations of federal statutes and regulations where

(a) only a small number of Puerto Rican workers (at most 787) were harmed by the alleged actions of the Virginia growers,

(b) the impact of the alleged wrongs upon the general economy of Puerto Rico was slight,

(c) the lawsuit constitutes an aggregation of individual claims that the Puerto Rican workers may have against the Virginia growers, and

(d) the Puerto Rican workers allegedly aggrieved have adequate remedies and have clearly demonstrated their ability to pursue those remedies.

PARTIES TO THE PROCEEDING

Alfred L. Snapp & Son, Inc.
Alfred L. Snapp, Sr.
John T. Watt & Son, a corporation,
d/b/a Timber Ridge Fruit Farm
John T. Watt, Jr.
Orchard Management Co., Inc.
Harry F. Byrd, III
D.K. Russell and Sons, Inc.
J. Robert Russell
Whitman Orchards
Gordon T. Whitman
Robert Boyd, a corporation, t/a Cloverdale Farm
Robert J. Boyd
The C.L. Robinson Corp.
Delmar Robinson, Jr.
R & T Packing Corp.
C. Robert Solenberger
E. Blackburn Moore
Fred L. and Philip B. Glaize,
d/b/a Crescent Orchards
Fred L. Glaize, Jr.
Philip B. Glaize
Frederick Farms
James R. Robinson
George B. Whitacre
H. F. & T. B. Byrd
John E. Crumpacker
H.F. Byrd
T.B. Byrd
Harvey Brumback
James Clevenger
McDonald Farms
James Kenneth McDonald
Messick & Beaver
Albert W. Messick
James Beaver

Frank L. Snapp and Elmer G. Snapp,
d/b/a/ H.T. Snapp & Sons
Frank L. Snapp
Elmer G. Snapp
R. Roland Snapp
Robert E. Wyatt
Stanley Bauserman
Stewart Bell
Henry Brumback
Woodside Farm
John W. Smith
William S. Franklin
Wayne McInturff
James B. Swing
George Cather
Garland R. Cather
Irvin R. King
Albert W. Messick
C.H. Jones Orchards

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceeding	ii
Table of Contents	v
Table of Authorities	vi
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Statement of the Case	2
Summary of Argument	14
Argument	16
The Commonwealth of Puerto Rico Lacks the Requisite Quasi-Sovereign Interest to Justify Parens Patriae Standing Where a Small Number of Puerto Ricans Were Harmed by the Alleged Activities of the Apple Growers, the Impact of the Alleged Wrongs Upon the General Economy of Puerto Rico Was Slight, and the Affected Puerto Rican Workers Are Able to Vindicate Their Own Rights	16
A. The Injuries Alleged Did Not Affect The General Population of Puerto Rico in a Substantial Way	16
B. The Commonwealth Is Attempting to Litigate as a Volunteer the Personal Claims of a Small Group of Its Citizens	24
C. The Puerto Rican Workers Allegedly Aggrieved Have Adequate Remedies and Have Clearly Demonstrated Their Ability to Litigate the Issues Themselves	27
Conclusion	34

TABLE OF AUTHORITIES

Cases: Page

Commonwealth of Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center, 356 F. Supp. 500 (E.D. Pa. 1973) 18, 23-24

Commonwealth of Pennsylvania, by Shapp v. Kleppe, 533 F.2d 668 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1976) 17 n.4, 18, 29

Commonwealth of Puerto Rico, Etc. v. Alfred L. Snapp & Son, Inc., 469 F. Supp. 928 (W.D. Va. 1979), *rev'd*, 632 F.2d 365 (4th Cir. 1980), *petition for cert. filed*, 49 U.S.L.W. 3573 (Feb. 2, 1981) (No. 80-1305) 1, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 27, 32, 33

Commonwealth of Puerto Rico ex rel. Quiros v. *Bramkamp*, Civil No. 79-0199 (S.D.N.Y., September 28, 1979), *rev'd*, 654 F.2d 212 (2d Cir. 1981), *petition for cert. filed*, 50 U.S.L.W. 3302 (Aug. 20, 1981) (No. 81-361) 13, 14, 17-18

Frederick County Fruit Growers Association, Inc., et al. v. F. Ray Marshall, et al., Civ. No. 78-0086(H) (W.D. Va., filed August 31, 1978), *appeals dismissed as moot and remanded*, 594 F.2d 857 (4th Cir., March 20, 1979) (unpublished) 6 n.2

Galan v. Dunlop, 411 F. Supp. 268 (D.D.C. 1975), *appeals dismissed as moot and remanded with order to vacate sub. nom. Galan v. Usery*, Nos. 76-1018 and 76-1019 (D.C. Cir. 1977) (unpublished) 6

Georgia v. Pennsylvania Railroad Co., 324 U.S. 439 (1945) 17, 27

Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907) 17 n.4

Hawaii v. Standard Oil Co., 301 F. Supp. 980 (D. Hawaii 1969), *rev'd on other grounds*, 431 F.2d 1282 (9th Cir. 1970), *aff'd on other grounds*, 405 U.S. 251 (1972) 16, 18 n.5, 19 n.6, 28, 32 n.14

Hernandez Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977), *cert. denied*, 436 U.S. 945 (1978) 6

Kansas v. Colorado, 206 U.S. 46 (1907) 24

TABLE OF AUTHORITIES—Continued

Page

Land O'Lakes Creameries, Inc. v. Louisiana State Board of Health, 160 F. Supp. 387 (E.D. La. 1958) 18, 19 n.6, 29 n.12
Louisiana v. Texas, 176 U.S. 1 (1900) .....
Maryland v. Louisiana, —— U.S. ——, 101 S. Ct. 2114, 68 L. Ed. 2d 576 (1981) 14, 17, 18, 24, 27, 28
Missouri v. Illinois, 180 U.S. 208 (1901) 17, 18, 28 n.12
Oklahoma v. Atchison, T. & S.F.R. Co., 220 U.S. 277 (1911) 17, 24, 28 n.12
Oklahoma v. Cook, 304 U.S. 387 (1938) 17, 24
Pennsylvania v. National Association of Flood Insurers, 520 F.2d 11 (3rd Cir. 1975) 18 n.5
Pennsylvania v. New Jersey, 426 U.S. 660 (1976) .. 15, 16, 22, 24, 28
Pennsylvania v. West Virginia, 262 U.S. 553 (1923) 17, 18, 27
Prince George's County, Md. v. Levi, 79 F.R.D. 1 (D. Md. 1977) 18
Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976) 14, 22, 23 n.9
State of California v. Frito-Lay, Inc., 474 F.2d 774 (9th Cir. 1973) 18 n.5
Washington Utilities & Transportation Commission v. F.C.C., 513 F.2d 1142 (9th Cir. 1975) 19 n.6

Statutes:

Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101-1503 (1976) 2, 3
Puerto Rico Public Law 87, 29 L.P.R.A. §§ 526 *et seq.* (1966) 5
Wagner-Peyser Act, 29 U.S.C. §§ 49-49k (1976) 2, 4
28 U.S.C. § 1254(1) 2

Regulations:

8 C.F.R. § 2.1 (1978) 3
8 C.F.R. § 214.2(h)(3) (1978) 3
20 C.F.R. Part 653 (1978) 2, 4
20 C.F.R. § 653.108 (1978) 4, 5, 25

TABLE OF AUTHORITIES—Continued

	Page
20 C.F.R. Part 655 (1978)	2, 4
20 C.F.R. § 655.201(a)(1) (1978)	4
20 C.F.R. § 655.201(b)(1) (1978)	4, 5
20 C.F.R. § 655.201(c) (1978)	4
20 C.F.R. § 655.202 (1978)	4
20 C.F.R. § 655.205 (1978)	4
20 C.F.R. § 655.210 (1978)	5, 31
20 C.F.R. Part 658 (1978)	2, 5, 31, 33
20 C.F.R. § 658.412(d) (1978)	31
20 C.F.R. § 658.501 (1978)	5, 31

Miscellaneous:

Report by the Comptroller General of the United States to Senator Robert C. Byrd, "Recruiting and Placing Puerto Rican Workers With Growers During the 1978 Apple Harvest Were Unsuccessful," HRD 80-45 (GAO, February 14, 1980) 20 n.7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-1305

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of
PEDRO BAREZ, SECRETARY, DEPARTMENT OF
LABOR AND HUMAN RESOURCES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App., pp. A16-A26) is reported at 632 F.2d 365 (4th Cir. 1980). The opinion of the district court (Pet. App., pp. A1-A15) is reported at 469 F.Supp. 928 (W.D.Va. 1979).

JURISDICTION

The court of appeals entered its judgment on October 9, 1980 and issued its order denying the petitioners'

timely petition for rehearing on December 16, 1980 (Pet. App., p. A27). The petition for a writ of certiorari was filed on February 2, 1981 and was granted on November 30, 1981. The jurisdiction of the Court rests upon 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved in this case are the Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101-1503 (1976), and the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k (1976). The administrative regulations principally involved are the temporary foreign labor certification process regulations, 20 C.F.R. Part 655 (1978), and the Wagner-Peyser Act regulations, 29 C.F.R. Parts 653 and 658 (1978). The pertinent provisions of these statutes and regulations are set forth at Pet. App., pp. A28-A57.

STATEMENT OF THE CASE

This action grew out of the events surrounding the 1978 apple harvest in the Commonwealth of Virginia. In the spring of that year, the petitioners, 32 apple growers located in the area of Winchester, Virginia, applied to the U.S. Department of Labor for certification of their needs for temporary foreign labor, anticipating that, as in prior years, they would not be able to recruit sufficient U.S. workers to harvest their apples.

Following the 1978 apple harvest, on January 11, 1979, the Commonwealth of Puerto Rico filed a complaint in the United States District Court for the Western District of Virginia against the 32 Virginia apple growers.[1] The Commonwealth sued in its capacity as *parens patriae* on behalf of, at most, 787 Puerto Rican workers who had allegedly accepted employment picking apples for the 32 Virginia growers during the 1978 apple harvest. The Commonwealth sought a declaratory judgment that each

[1] The complaint also named 19 officers, partners, or employees of the 32 apple growers.

of the 32 Virginia growers had breached the terms of his contracts with his Puerto Rican workers and had violated certain federal statutes and regulations. The Commonwealth also sought a permanent injunction against future violations by the 32 Virginia growers.

On April 19, 1979, Judge Turk of the Western District of Virginia held that the Commonwealth lacked standing as *parens patriae* to prosecute the action since neither the segment of the Commonwealth's population nor the injury to the Puerto Rican economy was of sufficient magnitude to confer *parens patriae* standing and since the Puerto Rican workers allegedly aggrieved were in fact actually litigating the same issues in other forums. On October 9, 1980, a divided panel of the United States Court of Appeals for the Fourth Circuit reversed the district court and held that the Commonwealth did have *parens patriae* standing.

The federal statutory and regulatory framework. Two separate statutory and regulatory schemes are involved in the admission of temporary foreign agricultural labor. The Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1976), regulates the admission of aliens into the United States. 8 U.S.C. §§ 1101(a)(15)(H)(ii) and 1184(c) provide for the admission into the United States of temporary foreign workers when enough qualified unemployed United States workers are not available. The Attorney General of the United States has delegated the responsibility for this determination to the Commissioner of Immigration and Naturalization, 8 C.F.R. § 2.1 (1978), and he, in turn, has delegated to the U.S. Secretary of Labor the initial responsibility for determining whether enough qualified United States workers are available to fill a particular job and whether the admission of temporary foreign workers will adversely affect United States workers. 8 C.F.R. § 214.2(h)(3)(1978).

The U.S. Secretary of Labor has promulgated regulations prescribing the standards under which he will cer-

tify an employer's need to hire temporary foreign workers. 20 C.F.R. Part 655 (1978). These regulations provide that an employer who anticipates a labor shortage may request a labor certification for temporary foreign workers by filing an application with a local office in the area of intended employment. 20 C.F.R. § 655.201(a)(1) (1978). Each temporary labor certification application must include a copy of the job offer which will be used by the employer for the recruitment of both U.S. and foreign workers. 20 C.F.R. § 655.201(b)(1)(1978). The job offer must contain the minimum terms and conditions set forth at 20 C.F.R. § 655.202 (1978). The temporary labor certification application and accompanying job offer must be filed with the local office early enough to allow the state agency to attempt to recruit U.S. workers locally and through the U.S. Employment Service's intrastate and interstate clearance system for 60 calendar days prior to the employer's estimated date of need. 20 C.F.R. §§ 655.201(c) and 655.205 (1978).

The interstate clearance system is a national system of public employment offices administered through the U.S. Employment Service established by the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k (1976). The purpose of the system is to provide a no-fee labor exchange, whereby employers located in sections of the country where there are too few workers can be brought together with qualified workers from other areas who are seeking employment. 20 C.F.R. § 653.108(b)(1)(1978). The U.S. Secretary of Labor has promulgated rules and regulations to carry out the provisions of the Wagner-Peyser Act, pursuant to the authority vested in him by the Act. 29 U.S.C. § 49k; 20 C.F.R. Part 653 (1978). Generally, an agricultural employer desiring to utilize the interstate clearance system must submit a job offer which meets certain specified minimum requirements. 20 C.F.R. § 653.108(c), (d) (1978). While similar in many respects, the requirements imposed by the temporary foreign labor certifica-

tion regulations are more stringent than those imposed by the Wagner-Peyser regulations. *Compare* 20 C.F.R. § 655.202(b) (1978) *with* 20 C.F.R. § 653.108(c) (1)-(5) (1978). Use of the interstate clearance system is voluntary except for those employers who seek certification for temporary foreign agricultural labor.

The temporary foreign labor certification regulations provide that, if the U.S. Department of Labor has probable cause to believe that an employer has not lived up to the terms of his temporary foreign labor certification, the U.S. Department of Labor shall investigate the matter. 20 C.F.R. § 655.210(a) (1978). If the U.S. Department of Labor concludes that the employer has not complied with the terms of the temporary foreign labor certification, the employer may not be eligible to apply for a temporary foreign labor certification in the coming year. *Id.* The employer may request a hearing, however, in which case the procedures set forth at 20 C.F.R. Part 658 Subpart E (1978) are to be followed. 20 C.F.R. § 655.210(a) (1978). The Employment Service Complaint System also applies to any employee complaints alleging that an employer has violated Employment Service regulations. 20 C.F.R. § 658.501 (1978).

Puerto Rico P.L. 87. Over the years, referral of Puerto Rican workers to East Coast apple growers such as the Virginia apple growers has been complicated by the existence of a law unique among the states participating in the interstate clearance system, Puerto Rico Public Law 87, 29 L.P.R.A. §§ 526 *et seq.* (1966), as amended. P.L. 87 requires any mainland employer seeking to hire Puerto Rican workers to first enter into a contract with the Commonwealth Secretary of Labor and Human Resources. Failure to do so subjects the grower to possible criminal and civil penalties. Because P.L. 87 imposes terms and conditions of employment more onerous and burdensome than those imposed by the Wagner-Peyser Act and the Immigration and Nationality Act, two courts have held

that Puerto Rican workers could not be considered "available" within the meaning of the Immigration and Nationality Act as long as the special conditions placed on their employment by P.L. 87 remained in effect. *See Hernandez Flecha v. Quiros* 567 F.2d 1154 (1st Cir. 1977), *cert. denied,* 436 U.S. 945 (1978), and *Galan v. Dunlop,* 411 F. Supp. 268 (D.D.C. 1975), *appeals dismissed as moot and remanded with order to vacate sub. nom. Galan v. Usery,* Nos. 76-1018 and 76-1019 (D.C. Cir. 1977) (unpublished).

As a result of the First Circuit's decision in *Flecha v. Quiros, supra,* the U.S. Department of Labor took the position, when the 32 Virginia apple growers filed their 1978 job offers, that the job offers would not be circulated to Puerto Rico. After this Court denied certiorari in *Flecha v. Quiros* on June 5, 1978, 436 U.S. 945 (1978), the legislature of Puerto Rico approved an amendment to P.L. 87 which became effective on July 13, 1978 (J.A. 32-36). This amendment authorized the Commonwealth Secretary of Labor and Human Resources to exempt prospective employers from P.L. 87 under certain conditions. The U.S. Department of Labor subsequently forwarded the job offers of the 32 Virginia apple growers to Puerto Rico on August 2, 1978, less than two weeks before the Virginia apple growers were supposed to be "certified" regarding their needs for temporary foreign workers. Second Amended Complaint for Declarative and Injunctive Relief (hereinafter referred to as "Complaint") ¶ 63 (J.A. 17). The last minute recruitment efforts ultimately produced names of approximately 787 Puerto Rican workers allegedly interested in picking apples for the 32 Virginia apple growers in 1978.[2] Complaint ¶ 65 (J.A. 18-20).

---

[2] The Virginia apple growers together with other apple growers and apple grower associations filed suit in the United States District Court for the Western District of Virginia challenging the propriety of the exemption from P.L. 87 and the referral of Puerto Rican workers. The district court granted the requested prelimi-

The complaint. The Commonwealth's complaint named 51 defendants, 32 apple growers and 19 officers, partners or employees of those apple growers. Complaint ¶¶ 5-55 (J.A. 3-13). The complaint alleged that 787 Puerto Rican workers had made firm commitments to work for one of the 32 Virginia apple growers. Complaint ¶ 65 (J.A. 18-20).

Only 420 Puerto Ricans actually arrived at the Virginia orchards, and approximately 30 still had employment three weeks later. Complaint ¶ 64 (J.A. 17-18). The remainder never left Puerto Rico allegedly "because of oral advice from the United States Department of Labor requesting cancellation of remaining flights." Complaint ¶ 64 (J.A. 17). The complaint alleged that the Virginia apple growers violated the contractual, statutory and regulatory rights of certain Puerto Rican workers (1) by failing to provide them with employment, (2) by subjecting them to work conditions more burdensome than those established for temporary foreign workers, or (3) by improperly terminating their employment. Complaint ¶¶ 72, 74 and 76 (J.A. 27-29).

First, as to the failure to employ, the complaint alleged two distinct types of violations. The complaint alleged that certain Puerto Rican workers had accepted employment from 10 of the Virginia growers and were instructed to depart from San Juan Airport on September 5, 1978. Complaint ¶ 66 (J.A. 20-22). These workers never arrived at the orchards because "their departure for the mainland United States was cancelled upon oral advice by the Office of the Solicitor, United States Department of Labor, to plaintiff Quiros that certain grow-

---

nary injunction. *Frederick County Fruit Growers Association, Inc., et al. v. F. Ray Marshall, et al.*, Civ. No. 78-0086(H) (W.D. Va., filed August 31, 1978), *appeals dismissed as moot and remanded*, 594 F.2d 857 (4th Cir. 1978) (unpublished). On June 16, 1980, the district court dismissed the case on the grounds of mootness. (Unpublished opinion.)

ers had refused to employ individuals recruited by the Puerto Rican Employment Service and referred from Puerto Rico." *Id.* (J.A. 22). The complaint also alleged that certain Puerto Rican workers presented themselves for employment at the orchards of eight Virginia growers and were denied employment.[3] Complaint ¶ 67 (J.A. 22-23).

Secondly, the complaint alleged that 28 of the Virginia growers had "improperly terminated" some of their Puerto Rican workers "for no stated reason, or on one or more of the following pretexts invoked by the defendants herein: (a) allegedly no work available; (b) alleged inability to pick sufficient quantities of apples; (c) allegedly picked damaged fruit; (d) allegedly no social security card." Complaint ¶¶ 68 and 69 (J.A. 23-25).

Thirdly, the complaint alleged that 28 of the Virginia growers subjected some of their Puerto Rican workers

> to one or more of the following work conditions, where Jamaicans were not subjected to such conditions:
>
> a. Inadequate or no training;
>
> b. Poor or unsanitary camp conditions;

---

[3] Of the 10 growers charged with refusing to hire the Puerto Rican workers whose departure for the mainland was cancelled "upon oral advice of the Office of the Solicitor," only *one* allegedly refused to hire Puerto Rican workers who presented themselves at the orchards. *Compare* Complaint ¶ 66 (J.A. 20-22) *with* Complaint ¶ 67 (J.A. 22-23). Thus, nine of the 10 growers listed in Complaint ¶ 66 were charged with failing to hire Puerto Rican workers even though they never refused to hire Puerto Rican workers who presented themselves at their orchards. In fact, the only allegation against four of the growers named in the complaint, *e.g.*, Robert Boyd T/A Cloverdale Farm, C.L. Robinson Corp., R.&T. Packing Corp., and George Whitacre, is that the flights of their scheduled workers were cancelled upon oral advice of the U.S. Department of Labor. With respect to these four growers, there are no allegations that they imposed more burdensome conditions or that they improperly terminated Puerto Rican workers.

c. Inadequate food;

d. Hired to pick apples but instructed to pick pears or other items (*e.g.*, peaches, weeds), or instructed to perform other types of work (*e.g.*, packing);

e. Required to pick apples that were noticeably smaller than apples Jamaicans were allowed to pick (thus, requiring longer time to fill bin);

f. Required to spot-pick after Jamaicans had been permitted to strip-pick;

g. Required to pick from top of tree after Jamaicans permitted to pick at bottom of tree;

h. Inadequate medical facilities and treatment;

i. Not fully paid for work performed;

j. Jamaicans permitted to start work at an earlier hour than Puerto Ricans;

k. Jamaicans permitted to work on Saturday and/or Sunday and Puerto Ricans were not;

l. Required to work on Sunday when did not want to for religious reasons;

m. Not given as many boxes to fill as Jamaicans;

n. Not given any, or sufficient number of, numbered stickers needed to affix to boxes after apples picked, in order to identify work product;

o. Required to fill a bin that belonged to a Jamaican; and

p. Subjected to verbal abuse or threatened to be fired.

Complaint ¶ 70 (J.A. 25-26).

The complaint requested a declaratory judgment that the Virgina apple growers had "breached the terms of

their contracts with named migrant Puerto Rican farm workers" and had violated various federal statutes and regulations, namely the Wagner-Peyser Act, the Immigration and Nationality Act, and the regulations promulgated pursuant to those acts. Complaint, pp. 30-31 (J.A. 30-31). The complaint also requested the district court to permanently enjoin the Virginia growers from violating the federal statutes and regulations in the future. Complaint, p. 31 (J.A. 31).

The district court's decision. On February 15, 1978, the Virginia growers filed a motion to dismiss the Commonwealth's complaint on the grounds that (1) the Commonwealth lacked standing to prosecute the action, (2) the Commonwealth was not the real party in interest within the meaning of Rule 17(a) of the Federal Rules of Civil Procedure, (3) the district court lacked jurisdiction over the subject matter of the suit, (4) the Commonwealth failed to join the affected Puerto Rican migrant farm workers who were indispensable parties for just adjudication of the suit, and (5) the Commonwealth's complaint failed to state a cause of action upon which relief could be granted.

After hearing oral argument on the motion to dismiss, the district court on April 19, 1979 entered a memorandum opinion and order dismissing the Commonwealth's complaint with prejudice on the ground that the Commonwealth lacked standing as *parens patriae* to prosecute the action. 469 F. Supp. 928 (W.D. Va. 1979) (Pet. App. A1-A15). The district court identified the quasi-sovereign interest asserted by the Commonwealth as "an interest in the protection and preservation of its general economy." 469 F. Supp. at 932 (Pet. App. A9). Based on its analysis of the leading *parens patriae* decisions, the district court identified "three crucial factors which influence the decision to grant or deny [*parens patriae*] standing: the size of the segment of the population that has been adversely affected, the magnitude of the harm

inflicted, and the practical ability of those injured to obtain complete relief." *Id.* (Pet. App. A9). The district court then stated that "it has been emphasized that the State must be seeking to represent a significant portion of its population." *Id.* (Pet. App. A10). The district court also observed that it must "determine whether the adverse conditions flowing from the challenged conduct are sufficiently severe and widespread as to constitute a wrong against the public interest." *Id.* at 933 (Pet. App. A12). Finally, the district court remarked that *parens patriae* status has been consistently denied to state plaintiffs whenever it appeared that the individual citizens were capable of maintaining and prosecuting their own actions for relief." *Id.* at 934 (Pet. App. A13).

Contrasting the allegations in the complaint against the principles outlined above, the district court concluded that the Commonwealth's complaint failed to present a justiciable quasi-sovereign interest sufficient to justify *parens patriae* standing. *Id.* at 934 (Pet. App. A13). The district court based its conclusion, in part, on the fact that neither the segment of the Commonwealth's population nor the injury to the Puerto Rican economy was of sufficient magnitude to confer *parens patriae* standing. *Id.* (Pet. App. A13). The district court pointed out that, at best, only 787 persons out of a total population of 2,712,033 were harmed directly by the alleged activities of the Virginia growers and that the jobs in question were temporary in nature with a maximum duration of two months. *Id.* (Pet. App. A13). The district court also based its conclusion on the fact that the Puerto Rican workers allegedly injured stood ready and willing to vindicate their own rights and were in fact actually litigating the same issues in other forums. *Id.* (Pet. App. A14).

The court of appeals' decision. On October 9, 1980, a divided panel of the Fourth Circuit handed down its decision reversing the district court and holding that the

Commonwealth did have *parens patriae* standing to maintain the action. 632 F.2d 365 (4th Cir. 1980) (2-1 decision; Hall, J., dissenting) (Pet. App. A16-A26). The majority opinion agreed that the district court applied the correct legal standards. The majority opinion stated that "three factors normally determine whether the quasi-sovereign interest is sufficiently important to permit standing: the size of the segment of the population that has been adversely affected, the magnitude of the harm inflicted, and the practical ability of those injured to obtain complete relief without intervention by the sovereign." *Id.* at 369 (Pet. App. A22-A23).

The majority opinion, however, disagreed with the district court's conclusions that the affected Puerto Rican workers could effectively litigate the same issues themselves and that the segment of the population and the injury to the Puerto Rican economy were not of sufficient magnitude to grant *parens patriae* standing. *Id.* (Pet. App. A23). As to the severity of the injury to Puerto Rico's citizenry, the majority opinion concluded that

> [t]he number of farm workers temporarily employed annually does not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens. The island's officials are coping with an almost unmanageable unemployment problem. Its economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior carry a universal sting.

Id. at 370 (Pet. App. A24). As to the ability of the Puerto Rican workers to fend for themselves, the majority opinion simply observed that

> [i]t cannot be said with any assurance that they are in positions to litigate these issues effectively. They would, at best, achieve a piecemeal solution of Puerto

> Rico's parens patriae grievances and in the process wastefully consume judicial resources.

Id. (Pet. App. A26).

Judge Hall, the dissenting judge, concluded that the district court applied the proper legal standards and "properly considered the number of people affected by the Growers' alleged activities, the potential economic impact, and the ability of the workers to litigate their own claims." *Id.* at 370-371 (Pet. App. A26).

The Virginia growers filed a petition for rehearing and suggestion for rehearing in banc with the court of appeals on November 24, 1980. The court of appeals denied the petition for rehearing on December 16, 1980 (Pet. App. A27). The Virginia growers filed a petition for writ of certiorari with this Court on February 2, 1981. The petition for writ of certiorari was granted by this Court on November 30, 1981.

The related lawsuit. At the same time the Commonwealth filed its complaint in this case, it also filed a complaint in the United States District Court for the Southern District of New York against 55 persons engaged in the business of growing apples in the State of New York. *Commonwealth of Puerto Rico on the relation of Carlos S. Quiros v. Bramkamp*, Civil No. 79-0199 (S.D.N.Y., filed January 12, 1979). The complaint in the New York case was virtually identical to the complaint in this case, the parties filed equivalent briefs, but no hearing was held. Following the lead of Judge Turk of the Western District of Virginia, Judge Kevin T. Duffy filed a memorandum endorsement on September 28, 1979, granting the New York apple growers' motion to dismiss. The memorandum stated simply that:

> For the reasons stated in the decision of Judge James Turk in the related case of *Commonwealth of Puerto Rico, etc. v. Alfred L. Snapp & Son, Inc., et al.*, 469 F. Supp. 928 (W. D. Va. 1979), the within motion to dismiss this action is granted.

On July 28, 1981, the Second Circuit reversed the district court and held that the Commonwealth did have standing as *parens patriae* to prosecute the action. *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp*, 654 F.2d 212 (2d Cir. 1981). A petition for writ of certiorari was filed with this Court on August 20, 1981 and is now pending. 50 U.S.L.W. 3302 (Aug. 20, 1981) (No. 81-361).

SUMMARY OF ARGUMENT

The quasi-sovereign interest asserted by the Commonwealth in this case, its interest in the health of its general economy, is deemed sufficiently implicated to support *parens patriae* standing only if the injury alleged affects the general population of the state in a substantial way. *Maryland v. Louisiana*, —— U.S. ——, 101 S.Ct. 2114 2124, 68 L.Ed.2d 576, 590 (1981). It is clear that relatively few residents of Puerto Rico were harmed directly by the alleged activities of the defendant growers (at best, only 787 Puerto Ricans out of a total population of 2,712,033). The court of appeals chose to focus on the "magnitude and pervasiveness of the societal harm" rather than the small number of Puerto Rican workers directly affected. In attempting to establish an effect beyond the number of migrant farm workers employed annually, the court of appeals cited the unmanageable unemployment problem in Puerto Rico and the low morale of the average Puerto Rican citizen, both of which bear at most a tenuous relationship to the alleged violations by the defendant growers. The impact of the challenged actions on the average Puerto Rican citizen is simply too vague, speculative and remote to justify *parens patriae* standing. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 44 (1976).

Furthermore, it is settled doctrine that a state does not have standing to sue as *parens patriae* if it is merely litigating as a volunteer the personal claims of its citizens. The complaint makes clear that this lawsuit constitutes nothing more than an aggregation of individual claims that an indeterminate number (not exceeding 787) of Puerto Ricans *may* have against 32 individual Virginia apple growers. The complaint seeks a declaratory judgment that the Virginia growers breached the terms of their contracts with the Puerto Rican farm workers. The individual nature of these employment disputes is clearly reflected in the assortment of allegations against the Virginia growers. The nature of the employment disputes would vary from worker to worker and employer to employer, with the validity of each Puerto Rican's complaint depending on the facts and circumstances of his individual case. Thus, this case represents an attempt by the Commonwealth to litigate as a volunteer the personal claims of a mere handful of its citizens in the guise of a *parens patriae* lawsuit. *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976).

Finally, *parens patriae* standing is inappropriate in this case because the Puerto Rican workers allegedly aggrieved have adequate remedies available to them and have clearly demonstrated their ability to pursue those remedies. *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976). A number of the Puerto Rican workers have brought individual suits against some of the Virginia apple growers, while others have brought purported class actions against the growers. In addition, the U.S. Department of Labor's Employment Service Complaint System is available to investigate and resolve employee complaints that an employer has violated Employment Service regulations. Only by refusing to acknowledge the numerous lawsuits already brought by the Puerto Rican workers could the court of appeals have concluded that those workers were not in positions to litigate the issues effectively. Allowing the Commonwealth to sue as *parens*

patriae would merely duplicate existing litigation and possibly involve the federal courts in private employment disputes on a continuing basis.

ARGUMENT

The Commonwealth of Puerto Rico Lacks the Requisite Quasi-Sovereign Interest to Justify Parens Patriae Standing Where a Small Number of Puerto Ricans Were Harmed by the Alleged Activities of the Apple Growers, the Impact of the Alleged Wrongs Upon the General Economy of Puerto Rico Was Slight, and the Affected Puerto Rican Workers Are Able to Vindicate Their Own Rights.

A divided court of appeals reversed the district court and held that the Commonwealth of Puerto Rico had standing as *parens patriae* to sue 32 Virginia apple growers on behalf of, at most, 787 Puerto Rican workers for alleged breaches of employment contracts and alleged violations of certain federal statutes and regulations. The basic areas of disagreement between the court of appeals and the district court were whether the segment of the population affected and the injury to the Puerto Rican economy were of sufficient magnitude to grant *parens patriae* standing and whether the affected Puerto Rican workers could effectively litigate the same issues themselves. In reversing the district court, the court of appeals misapplied applicable case law which sets forth the standards for *parens patriae* standing.

A. *The Injuries Alleged Did Not Affect the General Population of Puerto Rico in a Substantial Way.*

A state seeking to act in the capacity of *parens patriae* must assert a "quasi-sovereign" interest. *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 258 (1972). The quasi-sovereign interest asserted by the Commonwealth of Puerto Rico in this case "arises from the interest of

the Commonwealth in the health of its general economy."[4] *Commonwealth of Puerto Rico, Etc. v. Alfred L. Snapp & Son, Inc.*, 469 F.Supp. 928, 932 (W.D.Va. 1979) (Pet. App. A8); *Commonwealth of Puerto Rico v. Alfred L. Snapp & Son, Inc.*, 632 F.2d 365, 368 (4th Cir. 1980) (Pet. App. A21).

The mere assertion by a state that a challenged activity seriously affects its general economy, however, is not determinative of the question of whether the state has a justiciable interest in the litigation so as to confer *parens patriae* standing. *See Oklahoma v. Cook*, 304 U.S. 387, 393-94 (1938); *Oklahoma v. Atchinson, T. & S. F. R. Co.*, 220 U.S. 277, 288-89 (1911). This Court has often stated—a fact acknowledged by both the district court and the court of appeals in this case—that a state's quasi-sovereign interest will be deemed sufficiently implicated to support *parens patriae* standing only if "the injury alleged affects the general population of a state in a substantial way." *Maryland v. Louisiana*, —— U.S. ——, 101 S. Ct. 2114, 2124, 68 L.Ed. 2d 576, 590 (1981); *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 450 (1945); *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923); *Missouri v. Illinois*, 180 U.S. 208, 241 (1901).[5] *See also Commonwealth of Puerto Rico*

[4] This case, involving as it does an alleged injury to the general economy of the Commonwealth of Puerto Rico, differs substantially from *parens patriae* cases involving interstate public nuisances where it can be said that the state's *parens patriae* standing is based on the state's "interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *Georgia v. Tennesee Copper Co.*, 206 U.S. 230, 237 (1907). *Cf. Commonwealth of Pennsylvania, by Shapp v. Kleppe*, 533 F.2d 668, 675 n. 42 (D.C. Cir. 1976).

[5] Although most of this Court's decisions dealing with the right of a state to sue as *parens patriae* have been made in the context of suits between states brought pursuant to the original jurisdiction of this Court, the basic principles of *parens patriae* standing discussed in those cases have application to suits brought by a

ex rel. Quiros v. Bramkamp, 654 F.2d 212, 215 (2d Cir. 1981); *Commonwealth of Puerto Rico v. Alfred L. Snapp & Son, Inc.*, 632 F.2d 365, 369-70 (4th Cir. 1980) (Pet. App. A23); *Commonwealth of Pennsylvania, by Shapp v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976); *Prince George's County, Md. v. Levi*, 79 F.R.D.1, 4 (D.Md. 1977); *Commonwealth of Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center*, 356 F. Supp. 500, 505 (E.D. Pa. 1973); and *Land O'Lakes Creameries, Inc. v. Louisiana State Board of Health*, 160 F. Supp. 387, 389 (E.D.La. 1958).

Implicit in the requirement that the injury alleged must substantially affect the general population of a state to justify *parens patriae* standing is that the impact on the general population must be demonstrated by some quantitative manner. For example, in *Maryland v. Louisiana*, —— U.S. ——, 101 S. Ct. 2114, 2125, 68 L.Ed.2d 576, 591 (1981), the Court pointed out that "a great many citizens in each of the plaintiff States are themselves consumers of natural gas and are faced with increased costs aggregating millions of dollars per year"; in *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923), the Court noted that "a substantial portion of the State's population," approximately 1,500,000 citizens of Pennsylvania and 3,625,000 citizens of Ohio, were "seriously jeopardized" by the threatened cessation of oil deliveries from West Virginia; in *Missouri v. Illinois*, 180 U.S. 208, 241 (1903), the Court noted that not only would the large communities located on the Mississippi

---

state against a citizen of another state at the district court level. *See Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257-60 (1972). *See also Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp*, 654 F.2d 212, 215 n. 4 (1981); *Comonwealth of Pennsylvania, by Shapp v. Kleppe*, 533 F.2d 668, 675 (D.C. Cir. 1976); *Pennsylvania v. National Association of Flood Insurers*, 520 F.2d 11, 22-23 n.26 (3rd Cir. 1975); *State of California v. Frito-Lay, Inc.*, 474 F.2d 774 (9th Cir. 1973); and *Commonwealth of Puerto Rico, Etc. v. Alfred L. Snapp & Son, Inc.*, 469 F. Supp. 928, 932 n.1 (W.D. Va. 1979) (Pet. App. A9).

River be affected by the discharge of sewerage from Illinois but that the economic repercussions would "injuriously affect the entire state." [6]

In this case, as the district court pointed out, "it is clear that relatively few residents of Puerto Rico were harmed directly by the alleged activities of defendants. At best, only 787 persons out of a total population of 2,712,033 were so affected." 469 F. Supp. at 934 (Pet. App. A13). The district court concluded that "this segment of the population falls far below the 'substantial majority' suggested by some courts." *Id.* The 787 Puerto Ricans allegedly referred to the 32 Virginia growers in 1978 comprised less than three-hundredths of one percent (0.03%) of Puerto Rico's 1970 population. Even if all 2,318 Puerto Ricans allegedly referred to all East Coast apple growers in 1978 were deemed affected by the alleged actions of the 32 Virginia growers, that number constituted less than one-tenth of one percent (0.1%) of Puerto Rico's 1970 population.[7] The Commonwealth in-

---

[6] *See also Hawaii v. Standard Oil Co.*, 301 F. Supp. 980 (D. Hawaii 1969), *rev'd on other grounds*, 431 F.2d 1282 (9th Cir. 1970), *aff'd on other grounds*, 405 U.S. 251 (1972) (district court noted that actions of private defendants would affect a substantial number of Hawaii's citizens since Hawaii's 800,000 inhabitants owned 300,000 motor vehicles); *Washington Utilities & Transportation Commission v. F.C.C.*, 513 F.2d 1142, 1152 (9th Cir. 1975) (court of appeals noted that a substantial portion of Washington's citizens would be affected by increase in intrastate telephone rates); *Land O'Lakes Creameries, Inc. v. Louisiana State Board of Health*, 160 F. Supp. 387, 389 (E.D. La. 1958) (three-judge court held that interests of dairy industry do not affect whole economy or all the people of the state).

[7] In 1976, a total of 613 Puerto Rican workers were employed by all East Coast apple growers. Complaint ¶ 61 (J.A. 16-17). In 1977 only 93 Puerto Rican workers were referred to the East Coast apple growers. *Id.* In 1978, the numbers were swollen by a unique U.S. Department of Labor program that provided over $275,000 in Comprehensive Employment and Training Act (CETA) funds to transport the Puerto Ricans to the mainland. A report

formed the court of appeals that only 4,284 Puerto Rican workers were employed annually on *all* mainland United States farms in 1977, Appellant's Brief, at 27 n.57, a number which constitutes less than two-tenths of one percent (0.2%) of Puerto Rico's 1970 population.

Since few Puerto Ricans were involved in the 1978 Virginia apple harvest, it is difficult to comprehend how the alleged actions of the 32 Virginia growers could have affected either directly or indirectly a "substantial portion" of Puerto Rico's citizenry. In sharp contrast to the district court, the court of appeals did not even address these numbers.[8] The court of appeals sidestepped this issue, claiming that "the number of farm workers temporarily employed annually does not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens." 632 F.2d at 370 (Pet. App. A24). Instead, the court of appeals observed, "[i]t is the magnitude and pervasiveness of the societal harm that must be weighed—not the directness of the injury to particular individuals." *Id.* (Pet. App. A25). The court of appeals therefore focused on the fact that "the island's officials are coping with an almost unmanageable unemployment problem. Its economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior carry a universal sting." *Id.* (Pet. App. A24). The court

---

on the use of these funds is found in Report by the Comptroller General of the United States to Senator Robert C. Byrd, "Recruiting and Placing Puerto Rican Workers With Growers During the 1978 Apple Harvest Were Unsuccessful," HRD 80-45 (GAO, February 14, 1980).

[8] There is no mention in the court of appeals' opinion of the number of Puerto Rican workers referred to Virginia apple growers in 1978 (787) or the number of Puerto Rican workers who actually arrived at the Virginia orchards in 1978 (420), even though these numbers appear in the complaint. Complaint ¶¶ 64-65 (J.A. 17-20).

of appeals concluded that "[t]he apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or even with foreign temporary workers must certainly have an effect which permeates the entire island of Puerto Rico." *Id.* (Pet. App. A25).

The court of appeals' attempt to rationalize how a substantial portion of Puerto Rico's citizens could have been affected by the alleged actions of the 32 Virginia growers falls short in several respects. First, the court of appeals disregarded as irrelevant "the number of farm workers temporarily employed annually" claiming that it did "not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens." 632 F.2d at 370 (Pet. App. A24). In its efforts to establish an effect beyond the number of farm workers temporarily employed annually, however, the court of appeals assumed certain facts not even alleged in the complaint. For example, the court of appeals referred to "deliberate efforts to stigmatize the labor force as inferior" and "the apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or even with foreign temporary workers," 632 F.2d at 370 (Pet. App. A24-A25), even though no such allegations or suggestions are contained in the complaint. The court of appeals also stated that "the complaint alleges irreparable harm . . . to citizens in Puerto Rico who do not intend to migrate," *id.* (Pet. App. A25), even though the complaint clearly states that this lawsuit was intended for the benefit of "migrant Puerto Rican farm workers" interested in working for the defendant Virginia apple growers. Complaint ¶ 77 (J.A. 29).

Secondly, the court of appeals focused on the "almost unmanageable unemployment problem in Puerto Rico." 632 F.2d at 370 (Pet. App. A24). It is not clear whether the court of appeals meant that all unemployed Puerto

Ricans were affected by the alleged actions of the Virginia growers or that successful prosecution of this litigation against the 32 Virginia growers would substantially alleviate the unmanageable unemployment problem. The unemployment problem in Puerto Rico can no more justify *parens patriae* standing in this case than the financial condition of Pennsylvania could have justified *parens patriae* standing in *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976). If the unemployment rate in Puerto Rico were the determinative factor of whether a substantial portion of Puerto Rico's citizens were affected, the number of Puerto Rican workers directly affected would be immaterial. Such reasoning would allow the Commonwealth to claim *parens patriae* standing whenever a solitary Puerto Rican worker has an employment dispute with a mainland employer in which discrimination is alleged. In light of the Commonwealth's expressed intention "to use this power vigorously to protect its migrant workers involved in the harvest of other crops as well," 469 F. Supp. at 934 (Pet. App. A14), Transcript of March 7, 1979 Hearing, at 21, this is not as fanciful a notion as it may appear.

Finally, the court of appeals apparently concluded that actions of the 32 Virginia apple growers somehow adversely affected the already low "morale of the average Puerto Rican citizen." 632 F.2d 370 (Pet. App. A24). Here the court of appeals engaged in the kind of "unadorned speculation" that this Court cautioned against in *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 44 (1976). Nothing in the record would permit the court of appeals to conclude that the events of 1978 affected the "morale of the average Puerto Rican citizen." Even if the Commonwealth were granted *parens patriae* standing and were to prove all its allegations against the 32 Virginia apple growers in this case, the only Puerto Ricans who might benefit would be those migrant agricultural workers interested in picking

apples for those 32 Virginia growers in the future. Even if Puerto Ricans were to fill every position available, the total number so employed would constitute an insignificant portion of Puerto Rico's population and would not appreciably dent the unemployment rate in Puerto Rico. Whether the filling of every available position with Puerto Ricans would elevate the "morale of the average Puerto Rican citizen" would be pure speculation.[9]

The tenuous reasoning of the court of appeals in this case bears a close similarity to the line of argument rejected by the court in *Commonwealth of Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center*, 356 F. Supp. 500 (E.D. Pa. 1973). In that case, the Commonwealth of Pennsylvania attempted to sue as *parens patriae* on behalf of a woman who had been fired by the defendant allegedly for publishing her criticism of patient care and conditions at the Center; the Commonwealth of Pennsylvania claimed an interest in the matter because of its "affirmative obligation to protect free speech and assure the adequate flow of ideas and information including the flow of information critical of state or state-supported facilities for the mentally ill." *Id.* at 505. The district court stated that

> Any chilling of any individual's freedom of speech is bound to result in pernicious side effects, including an increased timidity on the part of other persons in similar positions and a decrease in the flow of certain kinds of information or opinion. This is one of the many reasons why any deprivation of rights

---

[9] *Cf. Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 44-45 (1976) (". . . indirectness of injury, while not necessarily fatal to standing, 'may make it substantially more difficult to meet the minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendant's actions, or that prospective relief will remove the harm.'. . Respondents have failed to carry this burden. Speculative inferences are necessary to connect their injury to the challenged actions of petitioners."

> guaranteed by the First Amendment must be carefully scrutinized and quickly remedied. However, merely because more than one Pennsylvanian may have been indirectly affected by Mrs. Rafferty's firing does not mean that Mrs. Rafferty's injury is an injury to all. Deprivations of an individual's First Amendment rights, whatever the secondary consequences, normally constitute an injury only to the individual. Neither existing law nor sound policy justifies viewing the deprivation of one person's freedom of expression as *a fortiori* a deprivation of the constitutional rights of the citizenry at large.

Id. The district court concluded that "the public interest claimed is . . . vague, speculative and remote, too remote to be encompassed by the doctrine of *parens patriae*." *Id.* at 506. By the same token, the impact of the challenged actions in this case on the average Puerto Rican citizen is too vague, speculative and remote to justify *parens patriae* standing.

B. *The Commonwealth Is Attempting to Litigate As a Volunteer the Personal Claims of a Small Group of Its Citizens.*

The Court has declared the "settled doctrine" that a state does not have standing to sue as *parens patriae* if it is "merely litigating as a volunteer the personal claims of citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976); *see also Maryland v. Louisiana*, —— U.S. ——, 101 S. Ct. 2114, 2124, 68 L.Ed.2d 576, 590 (1981); *Oklahoma v. Cook*, 304 U.S. 387, 394 (1938); *Oklahoma v. Atchison, T. & S.F.R. Co.*, 220 U.S. 277, 289 (1911); *Kansas v. Colorado*, 204 U.S. 331, 341 (1907). In the guise of a *parens patriae* lawsuit, the Commonwealth is, in reality, attempting to litigate as a volunteer the personal claims of a mere handful of its citizens.

It is clear from the complaint that this lawsuit constitutes nothing more than an aggregation of individual

claims that an indeterminate number (not exceeding 787) of Puerto Rican workers *may* have against 32 individual Virginia apple growers.[10] The individual nature of these claims is shown by the fact that the complaint seeks a declaration that the 32 Virginia growers "breached the terms of their contracts with named migrant Puerto Rican farm workers." [11] Complaint, at p. 31 (J.A. 30). Each of the 32 Virginia growers submitted an individual clearance order (job offer) for harvest workers in 1978, and the number of workers requested varied from grower to grower. Complaint ¶¶ 5-55 (J.A. 3-13). Each of the 787 Puerto Ricans who allegedly accepted one of these job offers made a commitment to work for a particular grower, Complaint ¶¶ 65-68 (J.A. 18-25), so that each Puerto Rican worker had an employment relationship with only one of the 32 Virginia growers.

The individual and personal nature of the claims is clearly reflected in the assorted allegations against the 32 Virginia growers. Ten of the 32 Virginia growers are charged with failing to provide employment to qualified Puerto Rican migrant farm workers who "never arrived at their intended places of employment" because their departure from Puerto Rico was cancelled "upon oral advice from the U.S. Department of Labor." Complaint ¶¶ 66 and 72 (J.A. 20-22, 27). In fact, that is

---

[10] The complaint specifically names only 41 Puerto Rican workers. Complaint ¶¶ 66-68 (J.A. 20-25). The complaint alleges that "the aforementioned United States migrant farm workers and others" were improperly terminated or subjected to more burdensome work conditions. Complaint ¶¶ 69-70 (J.A. 25-26). The complaint does not specify exactly how many of the 787 Puerto Ricans allegedly referred to the 32 Virginia apple growers were improperly terminated or subjected to more burdensome work conditions.

[11] 20 C.F.R. § 653.108(b)(1) (1978) provides that "[n]or does any job order accepted or recruited upon by the E[mployment] S[ervice] constitute a contractual job offer to which the ETA or a State agency is in any way a party."

the only allegation against four of these 10 Virginia growers. Eight of the 32 Virginia growers are charged with denying employment to some Puerto Ricans who presented themselves for employment at the growers' orchards. Complaint ¶¶ 67 and 72 (J.A. 22-23, 27). Seven of those eight growers are also charged with discriminating against other Puerto Ricans, indicating that their alleged failure to hire was not aimed at all Puerto Rican workers. *Compare* Complaint ¶ 67 (J.A. 22-23) *with* Complaint ¶¶ 68, 69, and 70 (J.A. 23-26).

The complaint further alleges that some Puerto Rican workers were terminated unlawfully "for no stated reason, or on one or more of the following pretexts invoked by one or more defendants herein: (a) allegedly no work available; (b) alleged inability to pick sufficient quantities of apples; (c) allegedly picked damaged fruit; (d) allegedly no social security card." Complaint ¶ 69 (J.A. 25). Not every Puerto Rican was illegally terminated since the complaint concedes that approximately 30 Puerto Ricans still had employment three weeks later. Complaint ¶ 64 (J.A. 18). The complaint also alleges that some Puerto Rican workers "were subjected by defendants and their agents and employees to *one or more* of the following work conditions, when Jamaicans were not subjected to such conditions," listing 16 separate conditions. Complaint ¶ 70 (J.A. 25-26). (Emphasis added.)

Thus, the nature of the employment dispute between a particular Puerto Rican worker and his employer varies from worker to worker and employer to employer, and the validity of each Puerto Rican's complaint would depend on the facts and circumstances of his case. For example, several of the "pretexts" allegedly invoked by the growers for terminating their Puerto Rican workers, Complaint ¶ 69 (J.A. 25), would justify the termination of any employee, *i.e.*, alleged inability to pick sufficient quantities of apples or allegedly picked damaged fruit. The court hearing the case would have to sift the facts

of each employer-employee relationship to determine whether termination was justified in each case. Conceivably, one Puerto Rican might prove that he was discriminated against, but not the other Puerto Ricans employed by the same apple grower. Furthermore, the fact that one of the Virginia apple growers may have violated the rights of one or more of his Puerto Rican workers would not mean that the other Virginia apple growers had similarly violated the rights of their Puerto Rican workers.

This case, comprised of an aggregation of varying sets of facts and circumstances, differs dramatically from cases like *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439 (1945), which involved freight rates which applied to all citizens of a state uniformly, or *Maryland v. Louisiana*, —— U.S. ——, 101 S. Ct. 2114, 68 L.Ed.2d 576 (1981), which involved a tax that applied equally to all gas imported into Louisiana not previously subjected to taxation by another state, or *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923), which involved a West Virginia law which would have affected all interstate customers equally. This case represents an attempt by the Commonwealth of Puerto Rico to litigate the personal claims of a mere handful of its citizens in the guise of a *parens patriae* lawsuit.

C. *The Puerto Rican Workers Allegedly Aggrieved Have Adequate Remedies and Have Clearly Demonstrated Their Ability To Litigate the Issues Themselves.*

A third factor that militates strongly against granting *parens patriae* standing to the Commonwealth in this case is the availability of adequate remedies to the affected Puerto Rican workers. In fact, both the district court and the court of appeals agreed that "the practical ability of those injured to obtain complete relief" was a relevant factor in determining whether *parens patriae* standing was justified. 469 F. Supp. at 932 (Pet. App. A9); 632 F.2d at 369 (Pet. App. A23).

The inability of those individuals actually aggrieved to secure relief on their own has been a major factor justifying *parens patriae* standing from the beginning. "Traditionally, the term was used to refer to the King's power as guardian of persons under legal disability to act for themselves. For example, Blackstone refers to the sovereign or his representative as 'the general guardian of all infants, idiots, and lunatics,' and as the superintendent of 'all charitable uses in the kingdom.' " *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257 (1972) (footnotes omitted). The inability of private persons to secure relief on their own as a justification for *parens patriae* standing is a strain that runs through the Court's decisions from the first through the last. The Court's first case to acknowledge the propriety of *parens patriae* suits, *Louisiana v. Texas*, 176 U.S. 1, 19 (1900), noted that "[the complaint's] gravamen is not a special and peculiar injury such as would sustain an action by a private person. . . ." The Court's latest case to acknowledge *parens patriae* standing, *Maryland v. Louisiana*, —— U.S. ——, 101 S. Ct. 2114, 2126 n.18, 68 L.Ed.2d 576, 592 n.18 (1981), noted that in *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976), ". . . jurisdiction was not proper under the *parens patriae* doctrine since the claims represented the aggregation of individual claims for wrongfully paid taxes which the individual commuter taxpayers were able to contest. . . Moreover, unlike the situation in *Pennsylvania*, individual citizens have no forum in which to challenge the tax because they did not directly pay the tax and are not entitled to bring refund actions in Louisiana." [12]

---

[12] *See also Missouri v. Illinois*, 180 U.S. 208, 241 (1908) (". . . suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies. . . ."); *Oklahoma v. Atchison, T. & S.F.R., Co.*, 220 U.S. 277, 289 (1911) (". . . although, an injury, in violation of law, to the property or rights of particular persons through the action of foreign corporations or citizens of States could be reached, without the intervention of the State, by suits instituted by the

Based on its review of the relevant *parens patriae* cases, the District of Columbia Circuit in *Commonwealth of Pennsylvania, by Shapp v. Kleppe*, 533 F.2d 668, 675 (D.C. Cir. 1975), observed that "[t]he cases indicate . . . that factors other than the degree of injury are influential in determining state standing. One of these which is in great measure dependent upon the injury alleged, is the presence or absence of a more appropriate party or parties capable of bringing the suit." The court then noted that "*parens patriae* standing appears to be most justifiable in those instances where undeniable harm has been done, but for some reason the individual injuries are not legally recognizable. . . The arguments in favor of allowing such standing become less compelling as it becomes more feasible to achieve complete relief through suits by the parties actually aggrieved." *Id.* at 675 n.42.

Adequate remedies are available to the affected Puerto Rican workers. A number of these workers have brought suit against some of the 32 Virginia growers in the local courts of Puerto Rico.[13] All but two of the 32 Virginia

---

persons directly or immediately affected."); *Land O'Lakes Creameries, Inc. v. Louisiana State Board of Health*, 160 F. Supp. 337, 390 (E.D. La. 1958) ("Actually there is no need that Minnesota intervene as a party. The Minnesota dairy industry can adequately protect its own interest.").

[13] *See, e.g., William Ocasio, et al. v. Irwing King Drilake Farm, Inc.*, Civil No. CS 78-2443 (Guayama Div.) (10 plaintiffs); *Obdulia Caban Badillo, et al. v. Fred and Philip Glaize*, Civil No. TS 78-3952 (Aguadilla Div.) (13 plaintiffs); *Rafael Diaz Medina v. Frederick Farms, Inc.*, Civil No. 78-3273 (Humacao Div.); *Gervasio Vazques Solis v. Harvey Brumback*, Civil No. 78-3300 (Humacao Div.); *Juan R. Mariana Ortiz, et al. v. Henry Brumback Woodbine Farm, Inc.*, Civil No. CS 78-2441 (Guayama Div.) (2 plaintiffs); *Carlos Flores Reys v. C.L. Robinson*, Civil No. CS 79-100 (Humacao Div.); *Eladio Saez Vellon, et al. v. E. Blackburn Moore*, Civil No. 78-3335 (Humacao Div.) (6 plaintiffs); *Bienvenida Soto Vega v. Orchard Management Co.*, Civil No. 78-3299 (Humacao Div.); *Santiago Lebron, et al. v. Orchard Management Co.*, Civil No. 78-2705 (Guay-

apple growers in this case were named as defendants in a purported class action filed in the United States District Court for the District of Puerto Rico. *Ceferino Lopez Rivas, et al. v. Secretary of Labor F. Ray Marshall, et al.*, Civ No. 78-2175 (D.P.R., filed November 9,

---

ama Div.) (3 plaintiffs); *David Cruz Sosa v. Wayne Mc. Onturff*, Civil No. 79-1838 (Aguadilla Div.); *Serafin de Jesus Rivera, et al. v. McDonalds Farms*, Civil No. 78-1869 (Utuado Div.) (3 plaintiffs); *William Del Valle Fonseca, et al. v. Messick and Beaver*, Civil No. CS 79-589 (Caguas Div.) (3 plaintiffs); *Miguel Laboy Colon v. Ray D. Rinker Estate*, Civil No. 79-1895 (Caguas Div.); *Agustin Morales v. Garland R. Cather*, Civil No. TS 78-3951 (Aguadilla Div.); *Ramon L. Charles Rosaly v. Irwing King Drilake Farm, Inc.*, Civil No. 79-1717 (Guayama Div.); *Julia Surrilo, et al. v. Irwing King Drilake Farm, Inc.*, Civil No. 78-2435 (Guayama Div.) (2 plaintiffs); *Jesus M. Pinto Rodriguez, et al. v. Alfred L. Snapp & Son, Inc.*, Civil No. 79-743 (907) (San Juan Div.) (2 plaintiffs); *Moises Alvarez Gonzalez, et al. v. Frederick Farms*, Civil No. TS 79-1839 (Aguadilla Div.) (2 plaintiffs); *Catalino Lopez Feliciano v. Orchard Management Co.*, Civil No. TS 79-1837 (Aguadilla Div.); *Virginia Arroyo v. Frederick Farms*, Civil No. 80-245 (Arecibo Div.); *Miguelina Vega v. Garland R. Cather*, Civil No. 80-254 (Arecibo Div.); *Daniel Caban Canan, et al. v. John T. Watts & Sons*, Civil No. 80-200 (Mayaguez Div.) (2 plaintiffs); *Jose R. Garcia Colon, et al. v. Messick & Beaver*, Civ. No. CS 80-577 (Aibonito District) (3 plaintiffs); *Jose M. Perez Medina v. Garland R. Cather*, Civ. No. CD 80-1889 (Aguadilla Div.); *Cruz Cortez Dominicci v. James Clevenger*, Civ. No. 80-1396 (Ponce Div.); *Efrain Serrano Viera, et al. v. Orchard Management and E. Blackburn Moore*, Civ. No. CS 80-1544 (Humacao Div.) (2 plaintiffs); *Manuel Mercado Nieves v. Fred and Phillip Glaize*, Civ. No. TS 80-3300 (Aguadilla Div.); *Gervasio Vasquez Solis v. Orchard Management and Harvey Brumback*, Civ. No. CS 80-1543 (Humacao Div.); *Alberto Acedevo Valentin v. Fred and Philip Glaize*, Civ. No. TS 80-724 (Aguadilla Div.); *Hector L. Parrila v. Henry E. Wyatt*, Civ. No. CS 80-1545 (Humacao Div.); *Angel L. Valle v. Frederick Farms*, Civ. No. CS 81-114 (Aguadilla Div.); *Victor M. Santos Vasquez v. D.K. Russell and Sons*, Civ. No. PE 81-707 (907) (San Juan Div.); *Carmelo Rosario Vasquez v. Irwing King Drilake Farm, Inc.*, Civ. No. 81-1849 (Guayama Div.); *Marcos Marti Sanabria v. John T. Watts & Sons*, Civ. No. CS 81-572 (Mayaquez Div.); *Ricardo Aponte Galindo v. Orchard Management Co.*, Civ. No. CS 80-289 (Mayaquez Div.).

1978). Shortly after the companion case to the instant action was dismissed by the United States District Court for the Southern District of New York, *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp*, Civ. No. 79-0199 (September 28, 1979), *rev'd*, 654 F.2d 212 (2d Cir. 1981), a class action was filed on behalf of mainland and Puerto Rican migrant workers against the New York apple growers and others, seeking both damages and injunctive relief against future violations. *Juan Valderrama Rios, et al. v. Secretary of Labor F. Ray Marshall, et al.*, Civ. No. 79-5711 (S.D.N.Y., filed October 22, 1979).

In addition to the forums where the allegedly aggrieved Puerto Ricans can litigate their grievances, the Employment Service Complaint System established by the U.S. Department of Labor is available to investigate violations of Employment Service regulations. *See* 20 C.F.R. Part 658 (1978). The U.S. Department of Labor has the authority to initiate an investigation on its own when it has probable cause to believe that an employer has not lived up to the terms of his temporary labor certification, 20 C.F.R. § 655.210(a) (1978), and the Department's regulations provide for the investigation of all employee complaints relating to failure to comply with the terms of the job offer or applicable regulations. 20 C.F.R. § 658.501 (1978). In fact, the very Employment Service regulations which the Commonwealth is seeking to enforce by means of this lawsuit specify the procedures to be followed when there is cause to believe that an employer has not lived up to the terms of his temporary labor certification. 20 C.F.R. § 655.210 (1978). The Employment Service regulations clearly provide that a labor supply state, such as the Commonwealth in this case, will play no role in the investigation of employee complaints when the work has been performed in another state, other than forwarding the complaints to the state where the work was performed. 20 C.F.R. § 658.412(d) (1978).

Although the district court and the court of appeals both agreed that "the practical ability of those injured to obtain complete relief" was an important factor in determining whether *parens patriae* standing was justified, 469 F. Supp. at 932 (Pet. App. A9), 632 F.2d at 369 (Pet. App. A23), there is a striking contrast in their reactions to the lawsuits filed by some of the Puerto Rican workers allegedly aggrieved by the actions of the 32 Virginia growers. The district court pointed to the "numerous individual lawsuits, as well as a broad based class action, [which] have been filed in the Puerto Rican and federal courts by some of the displaced workers against some of the growers, including several who are defendants herein," and concluded that, "[s]ince those most directly affected stand ready and willing to vindicate their own rights, the imperative for state intervention is absent." 469 F. Supp. at 934 (Pet. App. A14). The district court declared that it could "detect no valid purpose to be served by allowing this action to proceed when the fundamental issues are already being litigated elsewhere." *Id.*

In sharp contrast, the court of appeals ignored the many lawsuits already filed by the Puerto Rican workers —there being not one reference to these lawsuits in the court's opinion—apparently secure in its presumption, apparently arrived at through deductive reasoning, that such suits were not possible. The court of appeals observed that "migrant workers are so destitute that they must leave their homes for two or three months each year to seek employment," 632 F.2d at 370 (Pet. App. A25-A26), and, apparently on the basis of that premise, reasoned that "it cannot be said with any assurance that they are in positions to litigate these issues effectively." [14] *Id.* (Pet. App. A26). The court of appeals

---

[14] *Cf. Hawaii v. Standard Oil Co.*, 405 U.S. 251, 265 (1972), where this Court noted "in passing the State's claim that the costs and other burdens of protracted litigation render private citizens impotent to bring treble-damage actions, and thus that denying

then added its final observation that "they would, at best, achieve a piecemeal solution of Puerto Rico's parens patriae grievances and in the process wastefully consume judicial resources." *Id.* (Pet. App. A26).

Only by refusing to acknowledge the numerous lawsuits already brought by the Puerto Rican workers could the court of appeals have concluded that those workers are not in positions to litigate the issues effectively. Furthermore, the court of appeals completely overlooked the availability of the Employment Service Complaint System, which places a duty on the U.S. Department of Labor to investigate all employee complaints. *See* 20 C.F.R. Part 658 (1978). Finally, the concern of the court of appeals that private lawsuits would achieve a piecemeal solution and wastefully consume judicial resources disregards the fact that a *parens patriae* lawsuit would duplicate existing litigation involving the same facts and circumstances. A *parens patriae* lawsuit would not preclude private lawsuits by the Puerto Rican workers but would merely add to them. Thus, the Commonwealth would seek injunctive relief against a defendant grower in one action while Puerto Rican workers sought monetary damages and, in some cases, injunctive relief against the same grower in another action, possibly with conflicting results. If the Commonwealth were to obtain injunctive relief, the federal courts would be faced with a continuing involvement in private employment disputes. Any future discharge of a Puerto Rican worker by one of the defendant Virginia growers for alleged lack of productivity could find the Commonwealth rushing back to court seeking a contempt citation to enforce the injunction. The court would then have to examine all the facts and circumstances of that employee-

---

Hawaii the right to sue for injury to her quasi-sovereign interests will allow antitrust violations to go virtually unremedied. *Private citizens are not as powerless, however, as the State suggests.*" (Emphasis added.)

employer relationship to determine if the injunction had been violated.

CONCLUSION

The judgment of the court of appeals reversing the dismissal of the complaint against petitioners for lack of *parens patriae* standing should be reversed.

Respectfully submitted,

THOMAS J. BACAS

S. STEVEN KARALEKAS
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/466-7330

Attorneys for Petitioners

Of Counsel:

WILLIAM A. JOHNSTON
HARRISON & JOHNSTON
Winchester, Virginia 22601

January 14, 1982